



MIRICK O'CONNELL
ATTORNEYS AT LAW
MIRICK, O'CONNELL, DEMALLIE & LOUGEE, LLP

3762

May 7, 2004

Mail Stop: Response Non-Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED
MAY 13 2004
TECHNOLOGY CENTER R3700

Re: Applicant: Zappala
Serial No.: 10/005,390
Filed: December 3, 2001
For: Implantable Device and Method for Managing Erectile Dysfunction
Examiner: Evanisko, George Robert
Group: 3762
Docket No. 16865-00011

Dear Sir:

Enclosed is a Response to the Office Action mailed on April 7, 1004, in the subject application.

If for any reason this Response is found to be incomplete, or if at any time it appears that a telephone conference with counsel would help advance prosecution, please telephone the undersigned in Westborough, Massachusetts (508) 898-1501.

If any payment during prosecution is found to be insufficient or if any overpayment is found, please charge any deficiency or credit any overpayment to my deposit account number 50-1582. A copy of this letter is enclosed for use by the Finance Branch in the event that it is necessary to make any charge or credit to my deposit account.

Kindly acknowledge receipt of the foregoing by returning the enclosed self-addressed postcard.

Sincerely,

Jenifer E. Haeckl

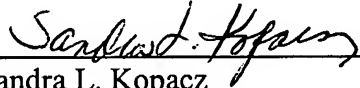
JEH/slk
Enclosures

MIRICK O'CONNELL



CERTIFICATE OF FIRST CLASS MAILING

I hereby certify that the attached RESPONSE is being deposited with the United States Postal Service, as First Class Mail, on this 7th day of May, 2004, in an envelope addressed to Mail Stop: Response Non-Fee, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.


Sandra L. Kopacz

RECEIVED
MAY 13 2004
TECHNOLOGY CENTER R3700



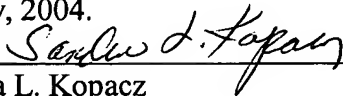
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Zappala
Serial No.: 10/005,390
Filed: December 3, 2001
For: Implantable Device and Method for Managing Erectile Dysfunction
Examiner: Evanisko, George Robert
Group: 3762
Docket No. 16865-00011

Commissioner of Patents and Trademarks
U.S. Patent and Trademark Office
Washington, DC 20231

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231 on this 7th day of May, 2004.


Sandra L. Kopacz

RESPONSE

This is a Response to the Office Action dated April 7, 2004 in the subject application.

The Applicant appreciates the Examiner's examination of the application and requests reconsideration and allowance based on the following elections and remarks.

The Examiner is requiring a restriction to one of two groups of inventions, as identified by the Examiner, under 35 U.S.C. §121. The Examiner stated that Invention I and II are related as process and apparatus, however, the Examiner concluded that the apparatus as claimed can be used to practice another and materially different process such as stimulating the heart for atrial fibrillation or the brain for epilepsy. The Examiner further stated that, although the apparatus claims contain language directed to erectile dysfunction, the language is directed toward intended

use limitations.

In response, the Applicant respectfully traverses the restriction requirement between Groups I and II and, as required, also identifies Group I, claims 1 - 13, drawn to a method for managing a patient's erectile dysfunction as the Applicant's elected group. With regard to the Examiner's conclusion that the apparatus as claimed can be used to practice another materially different process, the Applicant points out that the claims do not merely indicate intended use. Rather claim 1 specifically requires that the power source member be adapted to be implanted in the patient's lower abdominal wall; the pulse generating member be adapted to be implanted in the patient's lower abdominal wall; the electrode be adapted to be implanted at the suprapubic level of the patient's neurovascular bundle of the phallus and connected to said power source member and pulse generator; and that the electrode be adapted to electrically stimulate the neurovascular bundle upon selective activation by the patient.

With regard to Group I, in the event that no generic claim is held to be allowable, the Examiner is also requiring the Applicant to select one of two species of means used to deactivate the power source and pulse generator, namely as identified by the Examiner, when a predetermined electrical potential is reach or when a predetermined temporal period has passed. In response, the Applicant elects the means for deactivating based on a temporal period.

Each of the Examiner's requirements has been addressed. Accordingly, it is respectfully submitted that the application is in condition for allowance. Early and favorable action is requested.

If for any reason this Response is found to be incomplete, or if at any time it appears that a telephone conference with counsel would help advance prosecution, please telephone the

undersigned in Westborough, Massachusetts at (508) 898-1501.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jennifer Haeckl", written in a cursive style.

Jennifer Haeckl

Reg. No. 41,812